

**REMARKS**

Claim 8 has been amended for clarification purposes and claims 33-34 and 41-42 have been canceled. New claims 43 - 46 have been added. These amendments are not intended to narrow the scope of these claims. The claims have been rewritten to place them in better form for examination and to further obviate the 35 U.S.C. §§102, 103 and 112 rejections set forth in the Final Office Action dated August 12, 2003 and Advisory Action dated December 19, 2003. It is believed that none of these amendments constitute new matter. Withdrawal of these rejections is requested.

**Rejections from Office Action dated August 12, 2003**

Claim 8 is objected to for informalities. Applicant has amended claim 8 as suggested by the Examiner.

Claims 33-34 and 41-42 are rejected under 35 U.S.C. §112, first paragraph as containing subject matter that was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Applicant has canceled claims 33-34 and 41-42 in favor of new claims 43 - 46. Withdrawal of this rejection is respectfully requested.

Claims 33-34 and 41-42 are rejected under 35 U.S.C. §112, first paragraph as containing subject matter that was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. Applicant has canceled claims 33-34 and 41-42 in favor of new claims 43 - 46. Withdrawal of this rejection is respectfully requested.

Claims 8, 33-34 and 41-42 are rejected under 35 U.S.C. §112, second paragraph as being indefinite. Claim 8 is rejected as indefinite in its recitation of "the tissue is from a tissue . . . hypocotyls". Applicant has amended claim 8. Claims 33-34 and 41-42 have been canceled in favor of new claims 43 - 46. Withdrawal of this rejection is respectfully requested.

**Rejections from Advisory Action dated December 19, 2003**

Claim 45 is rejected under 35 U.S.C. §112, first paragraph as containing subject matter that was not described in the specification in such a way as to enable one skilled in the art

to which it pertains, or with which it is most nearly connected, to make and/or use the invention. Upon allowance of the claims in this application, the deposit will be made with American Type Culture Collection. As stated in the amended specification on page 33, the seed deposit is being maintained by Harris Moran Seed Company at their Sun Prairie, Wisconsin facility. The deposit will be available to the Commissioner during the pendency of this application and upon allowance of any claims, deposit of the cucumber seed will be made with the American Type Culture Collection.

The undersigned avers that:

- a) access to the invention will be afforded to the Commissioner during the pendency of the application;
- b) all restrictions upon availability to the public will be irrevocably removed upon the granting of a patent;
- c) the deposit will be maintained in a public depository for a period of 30 years or 5 years after the last request or for the enforceable life of the patent, whichever is longer;
- d) a test of the viability of the biological material at the time of deposit; and
- e) the deposit will be replaced if it should ever become inviable or when requested by ATCC.

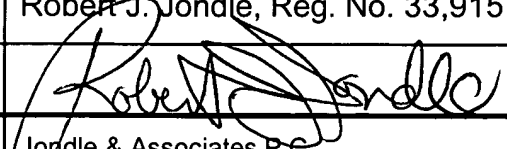
Accordingly, withdrawal of these rejections is requested.

The Examiner has rejected claim 8 under 35 U.S.C. §112, 2<sup>nd</sup> paragraph. Applicant has amended claim 8 and added new claim 46. Withdrawal of this rejection is respectfully requested.

Claim 45 is rejected as indefinite in the recitation "hybrid cucumber seed designated W83049\*8D-5079 . . . and hybrid W83049\*8D-5079". Applicant has amended claim 45 as suggested by the Examiner. Withdrawal of this rejection is respectfully requested.

Claim 8 is rejected under 35 U.S.C. §112, 2<sup>nd</sup> paragraph for an improper Markush group. Applicant has amended claim 8 and added new claim 46. withdrawal of this rejection is respectfully requested.

In view of the above amendments and remarks, it is submitted that the claim satisfies the provisions of 35 U.S.C. §112 and is not obvious over the prior art. Reconsideration of this application and early notice of allowance is requested.

RESPECTFULLY SUBMITTED,					
NAME AND REG. NUMBER	Robert J. Jondle, Reg. No. 33,915				
SIGNATURE				DATE	January 9, 2004
Address	Jondle & Associates P.C. 9085 East Mineral Circle, Suite 200				
City	Centennial	State	CO	Zip Code	80112
Country	U.S.A.	Telephone	303-799-6444	Fax	303-799-6898